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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 09/487,790 | 01/20/2000 | Raphael Gorodetsky | 995/46 | 3576 |

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| EXAMINER | |
|---|---|
| LIU, SAMUEL W | |
| **ART UNIT** | **PAPER NUMBER** |
| 1653 | |

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| **Advisory Action Before the Filing of an Appeal Brief** | **Application No.** 09/487,790 | **Applicant(s)** GORODETSKY ET AL. | |
|---|---|---|---|
| | **Examiner** Samuel W. Liu | **Art Unit** 1653 | |

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 03 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 7 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on *03 February 2006*. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): under 35 USC 112, first paragraph and second paragraph.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *none*.
   Claim(s) objected to: *none*.
   Claim(s) rejected: *1 and 10-12*.
   Claim(s) withdrawn from consideration: *none*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

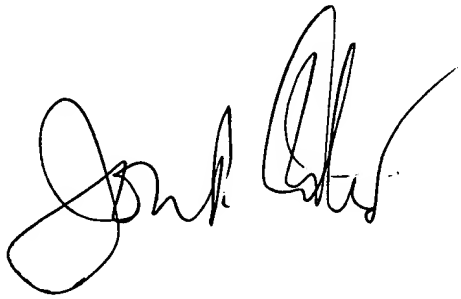
Continuation of 11. does NOT place the application in condition for allowance because: The amendment filed 2/3/06 overcomes the rejections under 35USC 112, first paragraph, and second paragraph; and amendment does not obviate the rejections under 35USC 102(b) by Henschen at el. and under 35USC 102(e) by Pandya et al. because of the following reasons.

The specification does not provide definition for the phrase "synthetic peptide", which therefore broadly encompasses any peptide/polypeptide biologically synthesized, recombinantly produced thereof, and chemically synthesized thereof. Furthermore, the specification teaches that the haptotatic peptide of the current invention is encoded by DNA sequence (see page 22, lines 15-20), indicating/suggesting that the peptide can be biosynthesized in vivo. Therefore, the references (Henschen et al. and Pandya et al.) are qualified for 102 and/or 103 art over the claimed invention (see below).

Note that the claim 1 language "a synthetic peptide derived from the carboxyl terminal sequence of human fibrinogen b chain having an amino acid sequence as set forth in SEQ ID NO:1" reads on any (size of) polypeptide/peptide comprising said SEQ ID NO:1 wherein the peptide/polypeptide is not unmodified fibrinogen, in view of that the polypeptide/peptide is biosynthesized in vivo (see the above statement).

Henschen et al. teach the modified human fibrinogen protein (see abstract) comprising the SEQ ID NO:1 sequence having the haptotatic activity. Thus, the rejection under 35 USC 102(b) to claim1 stands.

Similarity, Pandya et al. teach the modified human fibrinogen polypeptide comprising b-chain which lacks the first 42 amino acid residues of the full-length b-chain, and comprise the C-terminal sequence (residues 441-462) of said polypeptide, wherein said C-terminal sequence consists of the instant SEQ ID NO:1 (KGSWYSMRKMSMKKIRPFFPQQ) having haptotatic activity. Thus, the rejection under 35 USC 102(e)/103(a) to claims 1 and 10-12 stands.



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